

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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BONNIE MARCUS, et al. : CIVIL ACTION NO. 07-02075
:
v. : Philadelphia, Pennsylvania
: November 2, 2009
PQ CORPORATION : 10:32 o'clock a.m.
.

JURY TRIAL - DAY 1
BEFORE THE HONORABLE JOHN P. FULLAM
UNITED STATES DISTRICT COURT JUDGE

- - -

APPEARANCES:

For the Plaintiffs: SCOTT B. GOLDSHAW, ESQUIRE
KATIE EYER, ESQUIRE
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For the Defendant: ELIZABETH A. MALLOY, ESQUIRE
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1 (The following occurred in open court at 10:32
2 o'clock a.m.):

3 THE COURT: Good morning.

4 MR. ENNIS: Good morning, your Honor.

5 MR. GOLDSHAW: Good morning, your Honor.

6 MS. EYER: Good morning, your Honor.

7 THE COURT: Be seated, please.

8 We're about to start a trial, I hope, fairly soon.
9 And we have expended a great deal of paper on motions. Is
10 there any motion that anybody's really interested in, that
11 needs to be disposed of?

12 MR. ENNIS: Yes, your Honor.

13 THE COURT: What might that be?

14 MR. ENNIS: First, we didn't move in paper, but we
15 would first move to bifurcate liability and damages for this
16 trial.

17 MS. EYER: Yes, your Honor, one of our two clients
18 up here from Virginia. He took a great deal of time off
19 during the first trial, did not have the ability to come back
20 up for a second trial. The total amount of time that are
21 damages testimony takes up is roughly an hour.

22 THE COURT: Well --

23 MS. EYER: So it should not unduly defer the trial
24 to move forward with the damages testimony intact. And we
25 also were not notified of this request until this morning --

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1 THE COURT: How many plaintiffs are left here?

2 MS. EYER: Two, your Honor.

3 MR. ENNIS: Your Honor, the last time obviously we
4 didn't reach a verdict, so one of the benefits of bifurcating
5 would be to make sure everyone is focusing on liability,
6 making sure we get to a verdict.

7 THE COURT: That's what lawyers are for, to make
8 sure they do that.

9 The motion is denied.

10 MR. ENNIS: Okay. Now --

11 THE COURT: Now what else have we got?

12 MR. ENNIS: Your Honor, there seems to be some
13 misunderstanding about what can come in from the first trial,
14 and --

15 THE COURT: Very, very little. This is a new trial,
16 and the fact that one of the plaintiffs or two of the
17 plaintiffs did not succeed in persuading the jury, and the
18 jury did not accept their case, doesn't have anything to do
19 with whether these plaintiffs recover or not.

20 MR. ENNIS: And, your Honor, so in that regard, let
21 me give you some examples of what is going happen.

22 The plaintiffs have told us, for example, that they
23 are going to say Mary Ellen Callaghan, they're going to
24 provide Mary Ellen Callaghan's age and the fact that she was
25 terminated. Mary Ellen Callaghan is going to be relied upon

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1 by their statistical expert to come to a conclusion. So
2 they're going to rely on Mary Ellen Callaghan to prove, to
3 help prove discrimination in this case.

4 THE COURT: Well, from their perspective, the fact
5 that Mary Ellen Callaghan was fired is relevant.

6 MR. ENNIS: Except if that's true, your Honor, then
7 we should be entitled, since a jury has already rejected that
8 claim on age discrimination, we should be able to say at a
9 minimum that -- well, first of all, I think we should be able
10 to say that the jury reached a verdict against her.

11 How can they -- because, otherwise, we're being
12 prejudiced. They're being able to relitigate the claim of
13 Mary Ellen Callaghan that's already been rejected.

14 THE COURT: How are they relitigating it?

15 MR. ENNIS: By being able to tell the jury that,
16 Look at these people who were terminated, they were
17 terminated on the basis of their age, including Mary Ellen
18 Callaghan.

19 THE COURT: Are you estopped by a verdict?

20 MR. GOLDSHAW: No. Two quick points, your Honor.

21 First off, our intention with Mary Ellen Callaghan
22 is simply to note that as part of this reduction in force,
23 she was a person terminated and her age. We're not going to
24 go into the individual reasons for her at all.

25 The nature of the statistical analysis requires the

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1 statistician to look at the outcomes for everybody regardless
2 of age, and it is not --

3 THE COURT: Well, how about this? You get in as
4 little as you need to get in, and I will instruct the jury
5 that Mary Ellen Callaghan -- whatever her name is -- her case
6 is not before them. There may have very well been other
7 reasons.

8 MR. GOLDSHAW: And --

9 MR. ENNIS: Well --

10 MR. GOLDSHAW: -- your Honor --

11 MR. ENNIS: Okay. Sorry.

12 MR. GOLDSHAW: -- just point on that, because I
13 think it's important for me to emphasize that a jury verdict
14 for the defendant, in her case, means one of two things;
15 either they found there was no discrimination, or they found
16 it was equally likely as not that there wasn't. It is a
17 mischaracterization of the verdict to say that --

18 THE COURT: I think you should quit while you're
19 ahead over it. I've already ruled in your favor on that.

20 MR. GOLDSHAW: Oh, thank you, your Honor. I'll sit
21 down.

22 MR. ENNIS: Well, let me just explain the prejudice
23 to the defendant.

24 THE COURT: Yes.

25 MR. ENNIS: Your Honor has just made the statement

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1 that you're going to say to the jury that Ms. Callaghan may
2 have been let go for other reasons. We're going to have to
3 explain that. So we're going to say Ms. Callaghan's job was
4 eliminated.

5 Are the plaintiffs now going to come in and say,
6 Well, in fact, what about all these answers you gave the last
7 time? We're going to litigate Callaghan again.

8 THE COURT: No, we're not.

9 MR. ENNIS: So how we do avoid the prejudice when
10 they say, as evidence of their case now, that Callaghan was
11 discriminated against?

12 MR. GOLDSHAW: Your Honor, I think there's an easy
13 answer, if I may?

14 If they want to spend their time explaining why they
15 fired Mary Ellen Callaghan, it doesn't bother us. We're not
16 planning on calling her as a witness or litigating her case,
17 and if they want to do that, I'll just simply inform the jury
18 that they're trying to distract the attention away from the
19 plaintiffs. And I'm comfortable, I'm comfortable with that
20 if they want to do that, in other words, so I don't see
21 there's any prejudice.

22 MR. ENNIS: Your Honor, if your Honor would instruct
23 the jury that the parties have stipulated that Mary Ellen
24 Callaghan's job was eliminated, maybe that would avoid the
25 prejudice to the defendant, because otherwise we have to

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1 explain it in some way.

2 MS. EYER: And, respectfully, I don't think having
3 to explain it is a prejudice to the defendant. That's not --

4 MR. ENNIS: You're going to relitigate Callaghan.

5 THE COURT: We'll cross that bridge when we come to
6 it. I'm going to expect all the lawyers in the courtroom to
7 act like lawyers and try the case the way it should be tried.

8 MR. ENNIS: Okay. And then, your Honor, there's an
9 issue with one of the exhibits they want to use, and I think
10 that --

11 THE COURT: What might that turn out to be?

12 MS. MALLOY: Your Honor, I was on the telephone call
13 last week with your Honor, and my recollection of the phone
14 call was that you said that there should be no reference to
15 the prior trial. If there was a compelling reason why prior
16 testimony had to be referred to, it should be used as prior
17 testimony and not trial testimony.

18 THE COURT: Right.

19 MS. MALLOY: And then the plaintiffs asked about
20 this one exhibit, which I can hand up to you, and I recalled
21 your ruling to be that you were not ruling that this was --
22 could come in. This is a demonstrative exhibit from the last
23 trial. Because you needed to rule on it in the context in
24 which it was --

25 THE COURT: What does it demonstrate?

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1 MS. MALLOY: -- offered, and I believe plaintiffs
2 disagree with my recollection of the phone call.

3 THE COURT: A demonstrative --

4 MR. GOLDSHAW: May I respond briefly?

5 THE COURT: -- exhibit of what?

6 MR. GOLDSHAW: I'm sorry. May I respond briefly,
7 your Honor?

8 THE COURT: If you'd let me look at this first.

9 MS. EYER: This was an exhibit that was moved into
10 evidence by the defendant during the last trial of this
11 matter.

12 THE COURT: Then why does it say Plaintiffs' Exhibit
13 281?

14 MS. EYER: Because we --

15 MR. GOLDSHAW: We intend to use it --

16 MS. EYER: -- during --

17 MR. GOLDSHAW: -- in this trial as evidence of
18 pretext.

19 THE COURT: You have 280 previous exhibits?

20 MR. GOLDSHAW: No, no, no, no. We have skipped
21 numbers for reasons which I now may regret, but we have gaps
22 in the numbers.

23 This document -- the disturbing point of what I'd
24 like to say, your Honor, is we had a telephone conference
25 about it. Your Honor ruled that we may use this exhibit. We

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1 are not going to refer to the prior trial. Your Honor said
2 if there is some unforeseen circumstance where it must be
3 referenced, that your Honor would do a limiting instruction,
4 but I have no intention of asking about this being presented
5 at a prior trial.

6 THE COURT: What on earth is it?

7 MS. MALLOY: Your Honor, it's a demonstrative
8 exhibit that --

9 THE COURT: That is --

10 MS. MALLOY: -- pulls together two hours of Dr.
11 Lau's testimony, and it needs to be explained in the context
12 of his testimony, and I think consistent with your ruling
13 that there should be as little referral to a last trial --
14 there should be no referral to the last trial -- it's
15 essentially impossible to do that if they're going to use a
16 demonstrative exhibit from a prior trial with a witness.

17 THE COURT: You keep saying "demonstrative exhibit."
18 What does it demonstrate? It's not a demonstrative exhibit
19 of any kind. It's just a piece of paper with a lot of
20 numbers on it.

21 MS. MALLOY: It was not a PQ document. It was put
22 together by attorneys for purposes of illustrating something
23 to the jury. It's not like a company memo or something like
24 that.

25 MS. EYER: Respectfully, your Honor, it was moved

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1 into evidence in relation to the central explanation that
2 defendant's have given for plaintiff's termination. At the
3 last trial, this matter -- we demonstrated that it was
4 inaccurate in several regards, and we believe that it goes to
5 -- very much to both pretext and credibility.

6 THE COURT: You mean you want to get this into
7 evidence as something that the defendant's made up and that
8 it's inaccurate; is that the whole point?

9 MR. GOLDSHAW: Yes, there's two points, your Honor.

10 One is, as we contended at the last trial, we
11 contend one of our pieces of evidence of pretext is that
12 their explanation continues to change. This is an example of
13 yet another change in their explanation which presents
14 figures that are inaccurate.

15 So the purpose is really twofold:

16 One is changing explanation is absolutely evidence
17 of pretext and we're entitled to present it.

18 No. 2 is it does present a serious credibility issue
19 that their key witness gave testimony in support of a
20 document that contained inaccurate figures.

21 THE COURT: What is inaccurate? What figures are
22 inaccurate?

23 MR. GOLDSHAW: Several. During the last trial, the
24 witness showed that at least four of the figures were
25 directly contradicted by prior statements by the same

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1 witness. If this witness is going to argue on behalf of the
2 defendant that these figures informed the decision-making,
3 which is their position, I have the right to show that these
4 figures that he's presented continually change.

5 THE COURT: Well, my problem is I don't know what
6 they're going to -- what's going to precede the offer of
7 this. We'll thrash it out when the time comes. I don't know
8 what you're talking about, either of you.

9 MR. GOLDSHAW: Which is fine.

10 MS. MALLOY: Which is my recollection of what your
11 ruling was before.

12 THE COURT: Yes, okay. Let's get a jury.

13 MS. EYER: Respectfully, your Honor, plaintiffs also
14 have two motions that we were hoping that you could rule on
15 in advance of the trial.

16 One of them was in relation to several references
17 that were made by Mr. Doran during the last trial to the
18 advice of counsel in relation to this matter.

19 During discovery, Defense counsel repeatedly
20 objected to the extent we tried to obtain deposition
21 testimony on what the advice of counsel was in relation to
22 the RIF, and what should go on the documents in relation to
23 the RIF?

24 THE COURT: What advice of counsel do you -- are you
25 trying to get in?

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1 MR. ENNIS: We weren't getting in any advice of
2 counsel, your Honor. The testimony related to Mr. Doran, and
3 it related to the creation of some exhibit which is not
4 central at all to their case, and he was just saying how was
5 the exhibit created. I prepared it and I talked to a lawyer
6 about it.

7 MS. EYER: And, respectfully, your Honor, this was
8 the exact issue that they objected to as discussing during
9 the deposition of Mr. Doran, and, therefore, we did not have
10 the opportunity to inquire into it.

11 MR. ENNIS: It's not -- it's totally -- I shouldn't
12 say totally unrelated, but it's on -- it's an Exhibit A to a
13 release document, your Honor.

14 THE COURT: The most that can happen, as far as I'm
15 concerned, is that if it doesn't resolve itself in the
16 meantime, and you go into that, we'll do it in the absence of
17 the jury and see where you go, okay?

18 MS. EYER: I'm sorry, your Honor?

19 THE COURT: You may be permitted to explore that in
20 the absence of the jury, if necessary.

21 MS. EYER: Okay. That was why we were asking for a
22 ruling in advance --

23 THE COURT: Yes.

24 MS. EYER: -- of -- should we do it before his
25 testimony or?

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1 THE COURT: It depends on what he says, no.

2 MS. EYER: Okay. Respectfully, your Honor, since it
3 came out during our direct exam of Mr. Doran, we were hoping
4 to have a ruling from your Honor in advance of the testimony
5 as --

6 THE COURT: I find --

7 MS. EYER: -- to whether it would be permitted.

8 THE COURT: -- it difficult to understand why that
9 should come out through your direct testimony. Let's see
10 what happens.

11 MS. EYER: The second motion that we were hoping we
12 could get a ruling on in advance of trial was the last time
13 Defense counsel had elicited certain testimony from Ms.
14 Marcus about her failure to relocate to places such as Texas,
15 Florida, in order to seek another job.

16 Under the law that is not --

17 THE COURT: That stays out, yes.

18 MS. EYER: -- something she is required to do, and
19 we were hoping that we could get a ruling on that.

20 THE COURT: I rule on that in your favor. It's
21 clear that under Third Circuit law that's not an issue.

22 MR. ENNIS: And, your Honor, just so it's clear,
23 while Texas -- we understand -- but in terms of what is
24 reasonable within the Greater Philadelphia area, the Third
25 Circuit has not ruled on that, so there's going to be some

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1 leeway.

2 THE COURT: Well, let's get geographical. Where was
3 she not willing to go? Texas was one.

4 MS. EYER: They had specifically asked about
5 companies that are situated in other states, such as Texas --
6 you would know better than I would what you intend to do in
7 your exam, so --

8 MS. MALLOY: Some of them were New Jersey companies.
9 Kevin Doran --

10 MS. EYER: New Jersey is perfectly acceptable.

11 MS. MALLOY: New Jersey's acceptable, okay.

12 MR. ENNIS: New Jersey, Delaware, and Pennsylvania.

13 THE COURT: Well, you mean you expect somebody to
14 move to New Jersey?

15 (Laughter.)

16 Okay. Let's get a jury in and see where we go.

17 MR. ENNIS: And, your Honor, we're going to have a
18 continuing issue over hearsay testimony from Ed Myszak.

19 THE COURT: Well, I should have mentioned that. In
20 the in limine briefing, there seems to be a confusion as to
21 what is hearsay and what isn't. If Witness A heard some
22 responsible official of the defendant make some remark which
23 makes it appear that they were discriminated on the basis of
24 age, that comes in. The statement that they were
25 discriminated on account of age is not a hearsay statement

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1 that's being introduced for the fact that it was said.

2 But that does not mean that somebody who did not
3 hear the statement made can say, Oh, well, X told me that he
4 heard somebody make a remark. That would be hearsay and keep
5 it out. So any direct evidence of statements that suggest
6 age discrimination come in, okay?

7 MR. GOLDSHAW: May I just very concisely state what
8 I think is the key reasoning that I'd like to present, your
9 Honor, before a final ruling?

10 THE COURT: Key what?

11 MR. GOLDSHAW: I'd like to be very specific as to
12 what I would like to argue, and I can present it very
13 concisely?

14 What I'd like to show is that one of the decision-
15 makers had a belief that another higher-level decision-maker
16 wanted to get rid of the older people. My contention --

17 THE COURT: And what is the basis of that belief?

18 MR. GOLDSHAW: I'm sorry?

19 THE COURT: And what is the basis for that alleged
20 belief?

21 MR. GOLDSHAW: She was told by a high-level
22 corporate official. My contention is, even if she was told
23 by an anonymous note, if this witness believed that the
24 person she was making a joint recommendation --

25 THE COURT: What was she told?

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1 MR. GOLDSHAW: She was told -- the exact quote I
2 believe -- is that this other person, she was making a
3 recommendation with, said, quote, "We need to get rid of some
4 of these old farts," close quote.

5 And my contention is that if this witness believed
6 that is the state of the other person she's recommending
7 with, who is a higher-level official at the company, it is
8 relevant to her state of mind, even if it was just -- even if
9 she made it up. It doesn't matter. I goes to her state of
10 mind.

11 THE COURT: I believe --

12 MR. ENNIS: It's pure hearsay.

13 THE COURT: -- it would be reasonable only if it
14 were based on direct evidence. I disagree with you on that.

15 MR. GOLDSHAW: May I refer -- because I want to make
16 sure that I scrupulously follow your Honor's ruling -- may I
17 ask the witness, herself, is she believed that this other
18 person had that belief?

19 THE COURT: Certainly.

20 MR. GOLDSHAW: And if she denies it -- I have two
21 parts. I want to ask the witness, herself, if that was her
22 understanding of this other witness's belief, and if she
23 denies it, the second --

24 THE COURT: Now, wait a minute, wait a minute, wait
25 a minute. You were going to ask the witness, Mrs. Witness,

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1 do you believe that a discrimination was taking place?

2 MR. GOLDSHAW: But specifically, and this isn't an
3 exact quote, but I'm going to ask her, You were writing this
4 memorandum to recommend the termination of the plaintiffs
5 with this other person, Colleen Delmonte, correct?

6 And did you believe, when writing this memorandum,
7 that Colleen Delmonte wanted to get rid of the old farts?

8 I want to ask her if that was her belief? And if
9 she denies -- that's part one, which I think stands on its
10 own, and I think it's a direct inquiry into the mindset of a
11 decision-maker at the time, as to who she was working with in
12 this recommendation. And if she denies it, I do believe that
13 I'm entitled to impeach her denial, because she told somebody
14 else that's what she thought.

15 MR. ENNIS: Your Honor, that is just getting around
16 the hearsay ruling. Pure and simple.

17 MR. GOLDSHAW: State of mind of a decision-maker is
18 the most -- arguably the most relevant issue in a
19 discrimination case.

20 THE COURT: Well, is she the decision-maker?

21 MR. GOLDSHAW: Yes.

22 MS. EYER: She was.

23 MR. GOLDSHAW: Both of them were.

24 MR. ENNIS: Well, that's in dispute, your Honor.

25 That is in very big dispute.

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1 But the point is it is -- she's relying on triple --
2 they're relying upon triple hearsay.

3 THE COURT: I think it's quadruple, actually.

4 MR. ENNIS: Yes, it might be, but your Honor has
5 ruled, this is the way your Honor has ruled in the previous
6 trial.

7 THE COURT: That's why I'm going to rule this time,
8 too. We'll see where we go.

9 MR. GOLDSHAW: I'm sorry, I --

10 THE COURT: I'll hear you at the time if need be,
11 but I'm not going to rule in your favor now.

12 MR. GOLDSHAW: Thank you.

13 THE COURT: Let's bring in the jury.

14 (The jury panel entered the courtroom.)

15 (The jury voir dire occurred from 11:16 o'clock a.m.
16 until 3:32 o'clock p.m. off the record.)

17 THE COURT: May I have your attention, jurors? When
18 I call your name and number, would you please take all of
19 your belongings and have a seat in the jury box.

20 Starting in the first row, we have Juror No. 146,
21 Kimberly Leonowitz. Just have a seat right here in this row.
22 Juror No. 41, Nancy Kosowski. Juror No. 18, Andrew Hanson.
23 Juror No. 68, George Gilbert.

24 Okay. Starting in the second row, Juror No. 110,
25 Carl Ackerman. Juror No. 71, Carol Baker. Juror No. 43,

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1 Chad Maran. And Juror No. 145, Matthew Bakey.

2 Okay. Are counsel satisfied with the seating of the
3 jury?

4 MR. GOLDSHAW: Yes.

5 MR. ENNIS: Yes.

6 THE COURT: All right. The remaining jurors, thank
7 you for your attention, and your patience, and you can return
8 to the second floor to Room 27 -- I believe it's 2710 on the
9 second floor to the jury selection room.

10 (The jury panel exited the courtroom.)

11 (A recess was taken from 3:24 o'clock p.m. until
12 3:30 o'clock p.m.)

13 (The jury entered the courtroom.)

14 THE COURT: Everybody but the jury may sit down, and
15 we'll swear the jury in while they're standing up.

16 (The jury was sworn at this time.)

17 THE COURT: Be seated. Thank you.

18 Congratulations. Because we have other hearings
19 scheduled for later, we will just proceed with the opening
20 speeches today, okay?

21 You may open on behalf of the plaintiffs?

22 MR. GOLDSHAW: Thank you.

23 THE COURT: I don't know why we have to have
24 cardboard blocking everybody's view, but --

25 MR. GOLDSHAW: Your Honor, I've checked with

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1 opposing counsel. I know this easel placement is good. Does
2 this block your Honor's view from the jury?

3 THE COURT: I'm just old fashioned. I'm not used to
4 this sort of thing.

5 Go ahead.

6 PLAINTIFFS' OPENING STATEMENT

7 MR. GOLDSHAW: Good afternoon, everybody. As you
8 may recall, my name is Scott Goldshaw. I represent the
9 plaintiffs in this action, Bonnie Marcus and Roman Wypart.

10 This case is about a reduction in force. It's not
11 against the law to have a reduction in force. But if you're
12 going to have a reduction in force, it is against the law to
13 target just the older workers, and that's exactly what
14 happened here.

15 I'll show you. The plaintiffs were working in the
16 defendant's Research and Development Department. The
17 Research and Development Department had a total of 56 people;
18 17 of them were under the age of 40, 22 of them were between
19 the ages of 40 and 54, and 17 of them were 55 or older.

20 In total, in May 2005, when this RIFs took place,
21 eight people were targeted for termination. And let me
22 emphasize now that while you see stick figures on this
23 diagram, the eight people who were terminated were real
24 people, with real lives, who suffered real harm as a result
25 of their termination.

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1 Let me tell you who they picked. No. 1 -- these are
2 the eight people selected for termination -- No. 1,
3 Plaintiff, Bonnie Marcus, who's seated over here. She was in
4 the 55 and older category, age 60 at the time of termination.

5 No. 2, Roman Wypart. He was in the 55 and older
6 category, age 56.

7 No. 3, Eric Senderov. He was in the 55 and older
8 category, age 69.

9 No. 4, Richard Henchey. He was in the 55 and older
10 category, age 67.

11 No. 5, Al Behan. He was in the 55 and older
12 category, age 66.

13 No. 6, Mary Ellen Callaghan. She was in the 55 and
14 older category, age 55.

15 No. 6 -- excuse me -- No. 7, John Slabogin. He was
16 in the 55 and over category, age 64.

17 The 8th and last person targeted for termination,
18 Eleanor Tickner. She was in the 55 and older category, age
19 63.

20 These are the results of the reduction in force in
21 which the plaintiffs were terminated. All eight people
22 targeted for termination were over the age of 55. Nobody
23 under the age of 55 was targeted for termination.

24 The defendant in this case is going to tell you that
25 there's no pattern here, and that these selections for

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1 termination are not related to age.

2 Your job as jurors is going to be to determine
3 whether the selection of people for termination was more
4 likely than not based on their age. And that means, under
5 the law, if you find that you are 51 percent or more sure
6 that the plaintiffs' age is what got them fired, then you are
7 required to return a verdict in favor of the plaintiffs.

8 Let me get something out of the way here. This case
9 is not about the plaintiffs' performance, it's not about
10 their level of salary, and the defendant has never claimed
11 otherwise.

12 I now want to tell you about the people responsible
13 for the termination of the plaintiffs and others in this
14 department.

15 The plaintiffs were terminated on the recommendation
16 of three people. I've written their names here. I hope you
17 can see this. Michael Imbriani, Rosalyn Kutchins, Colleen
18 Delmonte. These are the people who wrote the recommendation
19 that got the plaintiffs' fired, and these are the people you
20 need to focus on in the trial.

21 Mr. Imbriani, at the time of the reduction in force,
22 was the head of the largest division in the entire company.
23 He was also the person charged with the responsibility of
24 compliance with the Equal Opportunity Policy at the company,
25 which prohibited age discrimination. While Mr. Imbriani was

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1 in that role, he directly ordered Rosalyn Kutchins to engage
2 in age discrimination. This occurred shortly before the
3 reduction in force in which the plaintiffs were fired.

4 What he told her is to demote of her employees and
5 replace him with quote, "younger blood." Those are Mr.
6 Imbriani's words to Ms. Kutchins, "younger blood."

7 At first Ms. Kutchins resisted, and she filed a
8 complaint against Mr. Imbriani with both the Human Resources
9 Department, and with the Legal Department, because she knew
10 he was asking her to break the law.

11 How did the company respond? Well, Ms. Kutchins was
12 reprimanded by her boss for issuing a complaint against the
13 head of the largest division in the company.

14 And what happened to the employee that Mr. Imbriani
15 told her to demote? Well, he was demoted anyway, despite her
16 complaint, and she was forced to find a replacement who was
17 younger.

18 But this is no isolated incident at this company.
19 At the time Mr. Imbriani, and other top-level managers at the
20 company in the Executive Management Team, had an objective to
21 make the company younger.

22 Ms. Delmonte was also on that committee with Mr.
23 Imbriani that pushed this objective, and they dubbed it as
24 the company's succession planning. By the time that the
25 reduction in force, when the plaintiffs got fired, Ms.

Mr. Goldshaw

24

1 Kutchins had gotten the message, and she knew what was
2 expected of her.

3 After the plaintiffs were notified of their
4 termination, Ms. Kutchins went to lunch with Ms. Marcus, the
5 Plaintiff, Ms. Marcus here, and some others, and Ms. Kutchins
6 told Ms. Marcus it was time for her to go graciously and
7 leave the door open for younger employees.

8 Now, the objective of these three people against the
9 older workers is not exactly a well-kept secret at the
10 company. And, in fact, the head of Research and Development,
11 where the plaintiffs' worked, six months before the layoff
12 occurred, spoke to Bonnie Marcus, and he told her the company
13 was in the process of being sold, and when it was sold, they
14 were going to be layoffs. And he told her that the layoffs
15 were going to target the older workers. And as you can
16 plainly see, he was right.

17 During the course of this litigation over time, the
18 company has offered three excuses for why they targeted just
19 the older workers for termination.

20 Excuse No. 1, the corporation said that the
21 plaintiffs were working in the Corporate Development Group,
22 which was entirely eliminated.

23 Fact, only the employees age 55 and older in the
24 Corporate Development Group were fired. And all of the
25 employees under the age of 55 in the Corporate Development

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25

1 Group were not.

2 THE COURT: I would point out that this is not the
3 time to make your closing argument. Just tell them what your
4 case is about.

5 MR. GOLDSHAW: The second explanation that the
6 corporation has offered is that the Corporate Development
7 funding source, which supported the plaintiffs' salaries, was
8 eliminated.

9 Fact, the younger employees under the age of 55 who
10 salaries were supported by the exact same funding source,
11 were not fired.

12 And Excuse No. 3, the corporation said that the
13 projects the plaintiffs were working on were discontinued.

14 The facts will show that the younger employees
15 assigned to the exact same projects were not fired. Only the
16 employees age 55 and older on those projects were fired.

17 During the course of this trial, I expect that the
18 defendant will try to distract your attention away from these
19 three people who were the ones who were responsible for
20 targeting the plaintiffs for termination. They will try to
21 distract your attention away from the people who have a past
22 history of age discrimination. And I expect what they will
23 do is they will have a corporate official named John Lau try
24 to take responsibility for the decision.

25 If and when that happens, I ask you to keep your eye

Mr. Goldshaw

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1 on the ball. These three people are the ones who held the
2 power. These there people are the ones who controlled the
3 money. And these three people are the ones that made the
4 actual recommendation that got the plaintiffs and others in
5 their department fired.

6 At the end of this case, I'm going to ask you to
7 return a verdict in favor of the plaintiffs, and at the time
8 I'm going to ask you to award them the full compensation
9 they're entitled to under the law. To compensate them for
10 their harm both financial and otherwise. One of your
11 important jobs in this case is going to be to place a value
12 on the harm that the plaintiffs have suffered.

13 In a moment, in a moment I'm going to sit down and
14 it will be time for the corporation's attorney to speak with
15 you. And under the rules, I don't get a chance to speak with
16 you until the very end of the case in closing argument.

17 When the corporation's attorney addresses you, I
18 expect that she may say something like, Bad things happen to
19 everybody, and that's just life, and it doesn't mean that
20 anybody did anything wrong.

21 Well, I ask you to remember, when the bad things are
22 targeted just at the older workers, that's not just life,
23 that's age discrimination and it's against the law.

24 Thank you.

25 THE COURT: You may open on behalf of the defendant.

Ms. Malloy

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DEFENDANT'S OPENING STATEMENT

MS. MALLOY: Good afternoon. My name's Liz Malloy. We met very briefly before and I'm counsel for PQ with peter Ennis and Kevin Doran, who is the vice president of Human Resources for PQ, and Colleen Jones is at the end of the table, and she's helping us with some of the documents, and I will introduce her again later.

When you got up this morning, when you came to court, you probably didn't hear anything, or know anything about PQ, and you're going to hear a lot about PQ. We are a chemical company which manufactures and sells chemicals that for the most part are used in other people's products. And if you drive a car, if you do a lot of laundry like I do, if you enjoyed a beer watching the World Series -- that's all I say about the World Series, okay -- you've touched PQ products.

A box of Tide Laundry Detergent is about 50 percent zeolites, and you're going to hear about this chemical called zeolites. The zeolite product goes into beer to make it clear as opposed to cloudy. And our chemicals are also used in a lot of refinery applications, and asphalt, and things like that. So you probably do know a little bit about zeolites, even though you don't know that right now.

I very much appreciate the conversation that we had in the courtroom earlier, and I know it was a long day, and

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1 it still is a long day, but it's important for us to have
2 that conversation, and I appreciate the honesty with which
3 you approached that conversation. As some of you said, You
4 think it's possible that a company could discriminate. You
5 think it's possible that a company could cover that up. And
6 I appreciate that you were honest, and I think we all need to
7 be honest with each other.

8 But I also know that you all said that you could
9 listen to the evidence, listen to all the evidence, listen to
10 the law as the Judge will instruct you, and hold judgment
11 until you've heard the whole case, and had an opportunity to
12 retire to the jury room. So when I talk to you again at the
13 end of the case, that will be when you're instructed on the
14 law, and you've had an opportunity to hear -- to hear all the
15 facts.

16 Let me tell you a little bit more about PQ, and
17 about the facts that gave rise to this reduction in force
18 which took place in May of 2005.

19 PQ is divided up into business units, and a business
20 unit is like a little corporation, a profit and loss center.
21 And we have three main business units. One is Industrial
22 Chemicals. For example, that's the laundry detergent, the
23 asphalt, the paving, et cetera. Catalysts and Absorbants is
24 the second business unit. That's the beer gel, and the
25 refinery products, and other things. And the last business

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1 unit is called Potters. Potters doesn't have much to do with
2 this case at all, but they are the business unit that is
3 responsible for the highway paint, the reflective paint on
4 the -- on the highways that keeps us all on the straight and
5 narrow there. And they were their own profit and loss
6 centers, and PQ manufactures and sells chemicals.

7 There was also a Research and Development Unit, and
8 the plaintiffs, Ms. Marcus and Mr. Wypart, worked in PQ's
9 Research and Development Unit, and the Research and
10 Development Unit was out in Conshohocken, off the Blue Route
11 of the Schuylkill there, and the corporate headquarters where
12 the business unit heads all had offices was out on 202, out
13 by the -- out by the King of Prussia Mall.

14 And, so, R and D traditionally was paid for --
15 somebody has to pay for it -- was paid for by the business
16 units, so they would have to allocate their funds to pay for
17 the salary, the overhead, the lab equipment, the training,
18 everything that would come along with about 55 R and D
19 employees.

20 In 2001, the former chairman of the company, CEO of
21 the company, a man by the name of Stan Silverman, came up
22 with what was called the Corporate Development Program. And
23 the idea of the Corporate Development Program was that the
24 company would give corporate funding to Corporate Development
25 projects so it didn't have to come from the business group,

Ms. Malloy

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1 because there was a little bit of tension between the
2 business groups and R and D. The business groups wanted
3 Research and Development to do products that could be sold
4 quickly, short-term research projects that could then be
5 manufactured and sold, because they were paying for R and D.

6 And Mr. Silverman thought, Let's come up with a way
7 to fund more long-terms projects, or exploratory projects,
8 projects that weren't really expected to hit the market to be
9 sold, to be manufactured in plants for more like a three to
10 five-year range. So the idea was that there would be
11 separate funding for the Corporate Development Program.

12 And if you could do that slide for us?

13 And the Corporate Development funding came from what
14 is called the holding company, and the holding company was
15 corporate funds that were not -- they didn't have to be paid
16 for by any business unit. So the holding company funded the
17 Corporate Development Program, which supported the Corporate
18 Development Group, which worked on Corporate Development
19 projects.

20 If you could do the next slide, please?

21 So after the Corporate Development Program was
22 established in 2001, R and D is then funded two different
23 ways. The vast majority of R and D is funded by the various
24 business units, and there is a separate Corporate Development
25 Program funded by the holding company.

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1 Now, John Lau, who was the vice president of R and
2 D, you'll hear him testify, is the person, as the vice
3 president of R and D, who had to keep track of this money.
4 He had to keep track of the funding that was given by the
5 holding company to the Corporate Development Program. And
6 you'll hear him testify about his manpower matrices, and how
7 he kept track of that money. Something had to fund these
8 individuals' salary, overhead, benefits, et cetera.

9 PQ was a family-owned business for about 170-some
10 years, and the company went up for sale at the end of 2004,
11 and actually the company was sold, the sale date was
12 mid-February of 2005. So new people come in.

13 And you'll hear testimony from Mike Boyce, who is
14 the new CEO. He was not a previous PQ employee. He's new.
15 Mike Boyce was a chemist himself by training. He had worked
16 in lots of different positions at chemical companies for 30
17 years. Mike Boyce and PQ engaged in an organizational
18 review, where the new owners, What would we do differently?

19 And there was a 90-day period in which the company
20 looked at how would we do business differently, what do we
21 want to change? And Mike Boyce made the decision -- not
22 these three people who are up on the poster board -- listen
23 to the testimony. Mike Boyce made the decision that based on
24 his experience, if a business unit did not want to pay for
25 research, it wasn't worth doing. If a business unit couldn't

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1 get excited enough to even want to put its own money towards
2 this, that it was not worth doing.

3 So Mike Boyce made the decision to eliminate the
4 holding company's money, which funded the Corporate
5 Development Program, and which supported the Corporate
6 Development Group. And John Lau, who was the vice president
7 of R and D, is the person, based on his budgets, who decided
8 which people would be affected by that layoff.

9 Now, Mr. Goldshaw drew your attention to his stick
10 figure chart in which he talked about every single person in
11 R and D who was laid off in May of 2005, was over the age of
12 55.

13 You will hear evidence that there were nine people
14 in R and D who were over the age of 55 who were not let go.
15 And what's so magic about the age of 55?

16 You'll also hear testimony that there were five more
17 people over the age of 50, who were not let go in this
18 layoff. So that's a total of 14 people over the age of 50 in
19 R and D -- I'm just talking about the R and D Unit, who were
20 not let go.

21 So I would encourage you to look at all of the facts
22 as a whole, and you will hear the explanation for each one of
23 those eight people in R and D who was ultimately -- who was
24 ultimately let go.

25 Ms. Marcus lost her job. She was laid off in the

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1 reduction in force, because the funding that supported her
2 position was eliminated. And Mr. Wypart was let go because
3 the funding that supported his position was eliminated.

4 And no one was hired to replace them. No one was
5 hired to this very day, November of 2009, to replace them.

6 If you could do the organization announcement?

7 So this layoff took place in May of 2005, and this
8 is the announcement, this is the announcement that was issued
9 in mid-June of '05.

10 If you could emphasize that paragraph there?

11 Plaintiff says the defendant keeps changing their
12 position. This is the explanation that was given in June of
13 '05.

14 The Corporate Exploratory Development Projects will
15 no longer be funded by corporate, and therefore the
16 respective businesses will determine which aspects of those
17 projects they wish to continue to fund. These changes offer
18 the opportunity for each business line to work closely with
19 their development teams to insure we continue to lead the
20 market in each of our key product areas.

21 Thank you for your attention. You will hear from a
22 number of witnesses. We will have an opportunity to talk
23 again at the end of the case. But the issue you will be
24 asked to decide at the end of the case is whether the
25 plaintiffs have met their burden of proving that the

Ms. Malloy

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1 terminations of their employment were on account of their
2 age.

3 My last comment has to do with the projector here.
4 We will try to show you documents in this format. We think
5 it helps a little bit. We can enlarge parts, highlight
6 parts, but when you do go into the jury room to deliberate,
7 you will be given copies of -- hard paper copies of the
8 documents that were introduced into evidence.

9 Thank you very much. I know it's been a long day
10 for you.

11 THE COURT: All right. We'll recess at this point
12 until tomorrow morning when we will start to hear the
13 evidence in the case.

14 I'm going to give you certain instructions which
15 will apply throughout the trial.

16 No. 1, of course is, that you should not discuss the
17 case until you've heard all of the evidence. You shouldn't
18 discuss it with anybody who's not on the jury for obvious
19 reasons, but it's also a good idea not to discuss it among
20 yourselves either, because you might express some opinion
21 early on that you would like to change and be embarrassed to
22 change it later. So just your own counsel, listen closely to
23 the evidence, and we'll see when the case is over.

24 If the lawyers or the parties happen to pass you in
25 the hall and don't speak, it's because they're not supposed

1 to talk to you about anything. Anybody who's not involved in
2 the case, you can talk to about things other than the case,
3 but the lawyers in the case, and the witnesses, and so forth,
4 you shouldn't talk to about anything at all, because it would
5 look bad.

6 Thank you for coming, and we'll see you tomorrow
7 morning at 10:00 o'clock.

8 (The jury exited the courtroom.)

9 THE COURT: We'll recess until ten after 4:00 for
10 the next criminal case.

11 (Pause.)

12 I would point out that it's still not too late to
13 settle the case if you found convincing the arguments of the
14 opponents. You might want to reconsider your position on
15 some of them.

16 I'll see you tomorrow morning.

17 MR. ENNIS: Thank you.

18 MR. GOLDSHAW: Thank you, your Honor.

19 MS. EYER: Thank you, your Honor.

20 MS. MALLOY: Thank you, your Honor.

21 THE COURT: Court will recess until the criminal
22 case is ready.

23 (Court adjourned at 3:59 o'clock p.m.)

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* * *

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Geraldine C. Laws, CET
Laws Transcription Service

Dated 12/14/09